18-546

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~369~~ 757 21

HENRY BOYCE, PLAINTIFF IN ERROR,

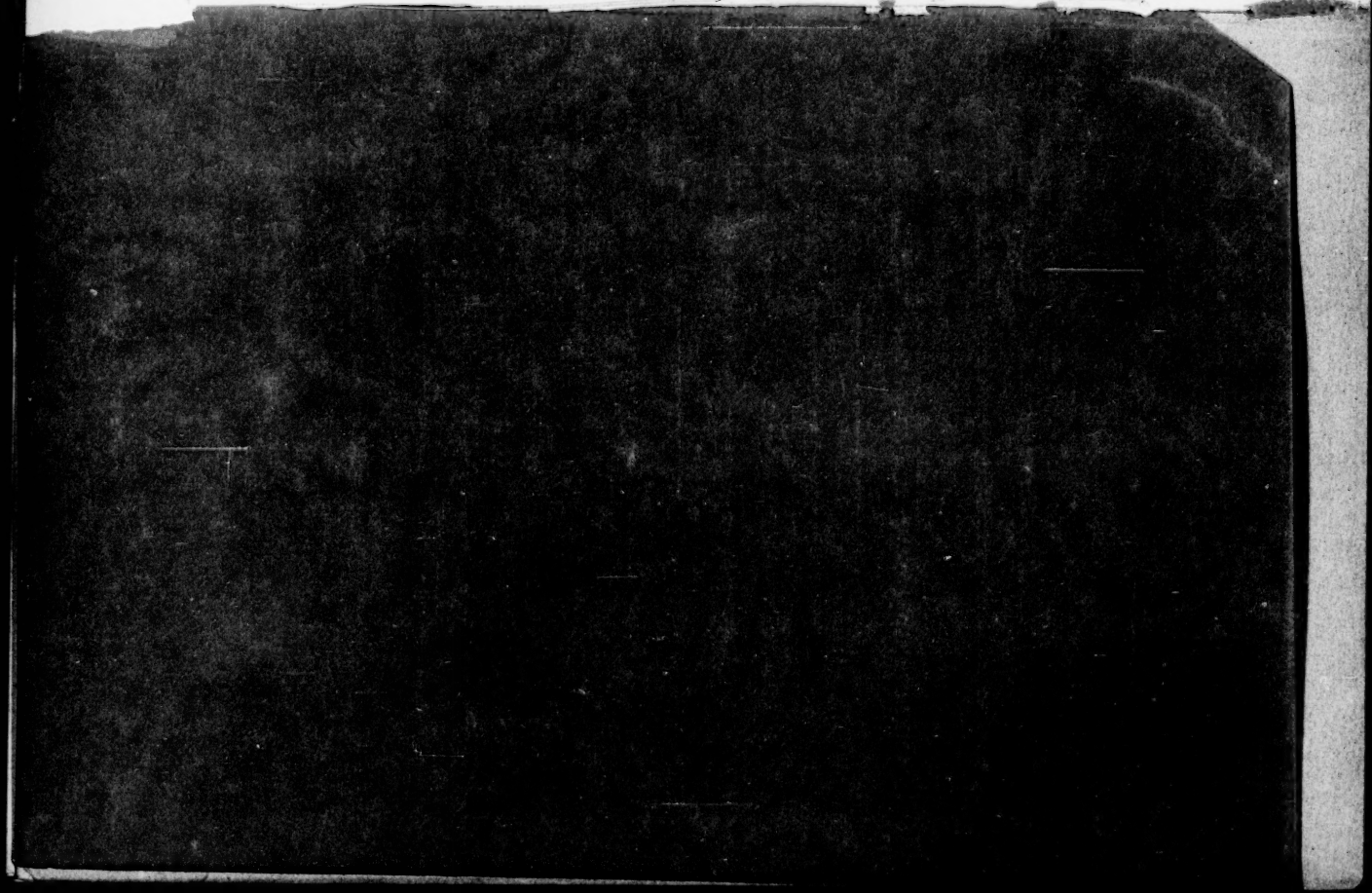
vs.

THOMAS S. TABB.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 21, 1871.

Oct. Term 1871



SUPREME COURT OF THE UNITED STATES.

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1 United States circuit court. Fifth circuit and district of Louisiana.

THOMAS S. TABB *vs.* HENRY BOYCE. } No. 5650.

Petition.—Filed July 11th, 1868.

To the Honorable E. H. Durell, judge of the circuit court of the United States for the fifth circuit and district of Louisiana.

The petition of Thomas S. Tabb, a citizen of the State of Texas, residing in Harris County, in said State, respectfully shows:

That Henry Boyce, a citizen of the State of Louisiana, residing in the parish of Rapides, in said State, is indebted to your petitioner in the sum of twenty-five hundred dollars, ($2,500.00,) with interest thereon at six per cent. per annum, from 13th Feb'y, 1861, for this, to wit, that the said Henry Boyce executed, at New Orleans, on the 13th Feb'y, 1861, his certain promissory note, whereby he promised to pay at the counting-house of Washington, Jackson, and Co., in the city of New Orleans, eight months after date, to the order of John P. Taliaferro, the sum of twenty-five hundred dollars, ($2,500.00,) with interest thereon, at the rate of six per cent. per annum from date.

2 Your petitioner aver' that said John P. Taliaferro was, at the date of the execution of said note, at the date of his assignment of the same to your petitioner, and now is, a citizen of the State of Virginia; and that said Taliaferro endorsed said note to your petitioner, who is now the holder and owner thereof, as will appear by said note, which is hereto annexed as part hereof. Your petitioner avers that, subsequently, to wit, on or about the 26 day of June, 1866, said Henry Boyce acknowledged, in writing, his obligation to pay said note, and promised to pay the same on the 1st day of November, 1867; that, nevertheless, the said Boyce has refused, and still refuses, to pay the same, although often amicably requested so to do, since the maturity thereof. Wherefore your petitioner prays that said Henry Boyce be duly cited to appear and answer this petition, and after due proceedings had, that your petitioner have and recover judgment against said Henry Boyce for the sum of twenty-five hundred dollars, ($2,500.00,) with interest thereon at the rate of six per cent. per annum, from 13th February, 1861, until paid.

He prays for costs and for general relief; and will ever pray, &c.

(Signed) C. M. CONRAD & SONS,
Att'ys for Petitioner.

Note marked "A," annexed to petition, and filed July 11th, 1868.

Dollars 2,500.] NEW ORLEANS, *Feb'y 13th*, 1861.

3 Eight months after date, I promise to pay to the order of John P. Taliaferro, twenty-five hundred dollars, with interest at six per cent. per annum from date, for value received, payable at the counting-house of Messr'. Washington, Jackson & Co., of this city.

(Signed) HENRY BOYCE.

(Endorsed on the back:)

JOHN P. TALIAFERRO.
T. S. TABB.

Citation to Henry Boyce.—Issued July 11th, 1868.

THOMAS S. TABB
vs.
HENRY BOYCE. } No. 5650.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon Henry Boyce, a citizen of the State of Louisiana, to comply with the demand of Thomas S. Tabb, a citizen of the State of Texas, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of August, 1868.

4 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 11th day of July, A. D. one thousand eight hundred and sixty-eight, and of the independence of the United States of America the 93rd year.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return on the foregoing citation.

Received July 11th, 1868, by the U. S. marshal, and on 13 day of July, 1868, served copy of within citation, plaintiff's petition accompanying same, on Henry Boyce, defendant, named herein, in hands Henry A. Boyce, j'r, a male, over 14 years of age, representing himself to be a son of defendant, at domicil of his father, p'lly at Cotile Landing, Rapides Parish, State of La., 372 miles distant from this city.

New Orleans, July 24th, 1868.

(Signed) J. F. MOLLERE,
Spec. D'y U. S. Marshal.

Answer.—Filed Nov. 17th, 1868.

U. S. circuit court.

THOMAS S. TABB
vs.
HENRY BOYCE. } No. 5650.

Defendant now comes into court through counsel, and, in answer to plaintiff's petition, admits his signature to the promissory note sued on, but pleads want of consideration therefor, on the following grounds, to wit:

5 1st. Said promissory was given in part payment of the price of a certain number of slaves sold by John P. Taliaferro to defendant. That plaintiff in this suit, at the date that he became the transferee of said note, and before said date, was fully aware and cog-

nizant of the consideration thereof; that the decisions of the supreme court of the State of Louisiana have fully and unequivocally established that all obligations thus contracted are null and void, and of no effect.

2nd. And should defendant fail on this point, she contends that the promissory note sued on wants consideration, for this, to wit: That a woman, forming part of the lot of slaves purchased from said Taliaferro, was afflicted with a *redhibitory* vice—epilepsy—rendering her entirely worthless as a slave, and ultimately causing her death. That the said Taliaferro, with full knowledge of her condition, had consealed the same from defendant, furthermore, warranting the said slave from all such defects; that he thus obtained from defendant a price, which added to the expenses incurred in conveying said slaves to said defendant's plan'tion in the parish of Rapides, and nursing her to the time of her death, was much larger than the amount of the note now sued on; that plaintiff, at the time of and before becoming transferree
6 of the said promissory note, was fully aware and cognizant of all the facts as above set forth.

Defendant therefore pleads want of consideration of the note sued upon, and respectfully asks that the present suit be dismissed, with costs. And further prays for all general and equitable relief.

And, as in duty bound, etc.

(Signed) A. & M. VOORHIES, *Att'ys.*

Supplemental petition.—Filed Jan'y 12th, 1869.

Circuit court United States.

THOMAS S. TABB
vs.
HENRY BOYCE. } No. 5650.

This, the supplemental and amended petition of Thomas S. Tabb, plaintiff herein, respectfully represents:

That defendant herein, by an agreement in writing made with plaintiff's attorneys after the maturity of the note sued on in the original petition, and long after it had become the property of petitioner, to wit, on 26th June, 1866, did promise and bind himself, in consideration of an extension of time granted, to wit, until November 1st, 1867, for the payment thereof, that he would, at that date, pay said note, with the accumulated interest, and did, further, waive any defences arising out of the consideration of the note.

Defendant hereto annexes said agreement, and prays that it be
7 considered a part hereof. Wherefore that judgment be rendered in his favor, as asked in the original petition.

(Signed) C. M. CONRAD & SON,
Of Counsel.

Order.

Let the supplemental petition be filed. Jan'y 12th, 1869.
(Signed) E. H. DURELL, *Judge.*

Document annexed to above petition, & filed Jan'y 12th, 1869.

NEW ORLEANS, *June 26th*, 1866.

On the first of Nov., 1867, I promise to pay the note, with interest,

made by me to the order of John P. Taliaferro, dated Feb'y 13th, 1861, for the sum of twenty-five hundred dollars, bearing interest at six per cent. per annum from date, the holder to postpone the exaction of the payment until that time.

(Signed) HENRY BOYCE.

I agree to waive any defences arising out of the consideration of the note.

(Signed) H. BOYCE.

[5-cents inter.-rev. stamp, affixed.]

Marshal's return on the foregoing petition.

Received, Jan. 13th, 1869, by the U. S. marshal, and on same day of Jan'ry, 1869, served copy of within supplemental petition & cit'n
8 on A. & M. Voorhies, att'ys named herein, in hands M. Voorhies, a member of said firm, personally, at office, 104 Canal s't, in this city.

New Orleans, Jan'ry 14th, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Answer to amended petition.—Filed Feb'y 24th, '69.

U. S. circuit court, district of Louisiana.

THOMAS S. TABB
vs.
HENRY BOYCE. } No. 5650.

And now comes into court, through counsel, defendant in the above-entitled cause, who, in answer to plaintiff's amended petition, files a general denial; and, furthermore, reiterates as his defence all the allegations contained in his answer to the original petition; and prays that this suit be dismissed with costs, and for all general and equitable relief.

And, as in duty bound, &c.

(Signed) A. M. VOORHIES,
Att'ys for Resp't.

Supplemental answer.—Filed March 22nd, 1869.

S. TABB
vs.
HENRY BOYCE. } No. 5650.

The defendant respectfully begs leave to file this his supplemental answer, and re-prays that he be allowed to amend his original answer for the purpose of having his cause tried by a jury.

9 Wherefore respondent prays that this cause be placed on the jury-docket of this honorable court, and that there be empanelled a jury for the trial of the same—

Prays for general relief, and, as in duty bound, etc.

(Signed) A. & M. VOORHIES, *Counsel.*

Order.

Let this supplemental answer be filed.
March 22d, 1869.
(Signed) E. H. DURELL, *Judge.*

Marshal's return of the foregoing answer.

Received Mar. 22nd, 1869, by the U. S. marshal, and on 23rd day of March, 1869, served copy of within supplemental answer on C. M. Conrad & Son, att'ys, in hands C. M. Conrad, jr., member of said firm, personally at office, No. 37 Carondelet street, in this city.
New Orleans, March 24th, 1869.
(Signed) H. J. SAMSON,
D'y Marshal.

Affidavit.—Filed April 9th, 1869.

Circuit court of the United States.

THOMAS S. TABB
vs.
HENRY BOYCE. } No. 5650.

Henry Boyce, the defendant, makes oath that the facts in his answer in this case are substan*tian*tially correct. And that, in praying for a jury, he does not do so for delay.
(Signed) H. BOYCE.

Sworn to & subscribed, April 9th, 1869.
(Signed) F. B. VINOT, *D'y Clk.*

Order of continuance.—Extract from minutes.—November term, 1870.

U. S. circuit court, fifth circuit and district of Louisiana.

NEW ORLEANS, *Thursday, Jan'y 12th*, 1871.

Court met, pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

T. S. TABB.
vs.
HENRY BOYCE. } No. 5650.

This cause was called for trial before the court and a jury—C. M. Conrad & Son, for plaintiff; Randolph, Singleton & Browne and A. Voorhies, for defendant—when the following persons were called and sworn to try the issue:

1. F. LANGE.
2. ED. PITOT.
3. C. W. BOOTHBY.
4. J. F. GRIFFIN.
5. E. BARNETT, J'R.
6. JON. PEMBERTON.
7. ANATOLE FORSTALL.
8. O. C. BLONDIN.
9. W'M PEMBERTON.
10. JON. AUGUSTIN.
11. JON. O'BRIEN.

And, being unable to complete the panel, the list being exhausted,

11 it is ordered that the cause be continued till to-morrow, at 11 a. m.; and that 26 additional names be drawn from the jury-box, and that the parties be summoned to appear on the day and hour aforesaid.

Note of evidence.—Filed Jan'ry 13th, 1871.

U. S. circuit court, district of Louisiana.

T. S. TABB *vs.* H'Y BOYCE. } No. 5650.

Plaintiff offered note sued on, marked "A."
Defendant offered bill of sale "X," and depositions, B & C.
Plaintiff offered deposition, D, also papers annexed to supplemental petition.

Bill of exceptions.—Filed Jan'ry 13th, 1871.

THOMAS S. TABB *vs.* HENRY BOYCE. } No. 5650.

Pending in the circuit court of the United States for the district of Louisiana.

This case being on trial before the court and a jury, his honor the judge charged the jury, in open court, before they retired, as follows:

"That it is not a legal defence to a suit brought on a promissory note executed in this State on the 13th of Febr'y, 1861, by the holder against the maker thereof, to allege and prove that such note was given as the price or part of the price of slaves sold to the maker.

12 "That such sale was at the time lawful and valid in said State, was a sufficient consideration for a note, and that the obligation could not be impaired by laws of a State passed subsequently to the date thereof. And that no law of the United States has impaired such obligation."

In the giving of which charge, the defendant did then and there except, and prayed that his bill of exceptions might be signed and sealed. And it is done accordingly.

Approved.

(Signed) E. H. DURELL, *Judge*. [SEAL.]

(Signed) C. M. CONRAD & SON,
For Plaintiff.

Verdict.—Extract from minutes.—November term, 1870.

United States circuit court, fifth circuit and district of Louisiana.

NEW ORLEANS, *Friday, Jan'ry 13th*, 1871.

Court met, pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

T. S. TABB *vs.* HENRY BOYCE. } No. 5650.

This cause came up agreeably to continuance—Conrad & Son, for plaintiff; A. Voorhies & Randolph, Singleton & Browne, for defend-

ant—when Nema Olivier was called and sworn on the jury, and, by consent of counsel, James Rea was sworn and substituted *to* the
13 juror, Anatale Forstall, who was excused from attendance by reason of a death in his family.

And the jury being now complete, the trial proceeded, and, after hearing the pleadings, evidence, and argument, and receiving a charge from the court, James Rea was appointed foreman of the jury, and they retired to consider on their verdict.

And, after a short absence, they returned into court, and delivered the following verdict, to wit:

"We, the jury, unanimously find in favor of plaintiff, as claimed."
Jan'y 13th, 1871.
(Signed) JA'S REA, *Foreman.*

Whereupon it is ordered that the verdict be recorded, and that, in accordance therewith, there be judgment in favor of the plaintiff, Thomas S. Tabb, and against the defendant, Henry Boyce, for the sum of twenty-five hundred dollars, with six per cent. per annum interest thereon from the 13th Jan'ry, 1861, till paid, and costs of suit.

Rule for new trial.—Extract from minutes of Tuesday, January 17th, 1871.

THOMAS S. TABB
vs. } No. 5650.
H. BOYCE.

14 On motion of Randolph, Singleton & B'owne & A. Voorhies, att'ys for defendant, it is ordered that plaintiff show cause, on the 23rd inst., at 11 a. m., why a new trial should not be allowed, and the verdict of the jury set aside, on the grounds filed.

Grounds for new trial.—Filed Jan'y 17th, 1871.

T. S. TABB
vs. } No. 5650.
HENRY BOYCE.

The defendant respectfully moves for a new trial on these grounds, among others:

1st. That the verdict of the jury is contrary to law and the evidence in this case; that the consideration of the note sued on being the sale of slaves, no action can lie to enforce the payment of said note, either in the State or United States courts, under the well-settled jurispudence of the supreme court of Louisiana, the article 128 of the constitution of Louisiana, and the 14th amendment of the Constitution of the United States. Such obligation as originally existed by the making of this note was ended and discharged by the making of those fundamental laws of both governments, and the charge to the jury to the contrary is er'oneous.

2nd. The jury erred in their verdict, contrary to law and evidence, in not making a deduction for the slave notoriously affected with
15 the exhibitory malady of epilepsy that rendered her worthless. There was a warranty in the sale against this. The evidence showed the vendor concealed this, and thereby committed a fraud. It is obvious the present plaintiff knew of it also. There is evidence as

well as intrinsic proof that this malady was not known to the purchaser at the time of sale, and no proof to the contrary, unless the allegation of the seller of a slight and temporary malady. Hence, the charge on this subject to the jury does not apply to the evidence adduced.

3rd. That the act of ratification and confirmation signed by plaintiff in February, 1866, is null and void for want of compliance with the requirements of the law, and especially so with art. 2252 of the Louisiana code.

It is, therefore, respectfully prayed that plaintiff show cause, on the 23rd day of January, why a new trial should not be allowed, and the verdict of the jury set aside.

Marshal's return on the foregoing.

Received January 18th, 1871, by the U. S. marshal, and returned not served; no money to pay for service.

(Signed) JO'N FAHY, *D'y Marshal.*

Order dismissing rule for new trial.—Extract from minutes of Wednesday, Jan. 25th, '71.

THOMAS S. TABB *vs.* HENRY BOYCE. } No. 5650.

The rule for a new trial was called—C. M. Conrad & Son for
16 plaintiff; A. Voorhies, for plaintiff, in rule, not present—when it is ordered that the rule be dismissed, and a new trial refused, with costs.

Verdict and judgment. From judgment docket, Friday, January 13th, 1871.

T. S. TABB *vs.* HENRY BOYCE. } No. 5650.

This cause came up agreeably to continuance—Conrad & Son for plaintiff, A. Voorhies and Randolph, Singleton & Browne for defendant—when Nema Olivier was called and sworn on the jury, and, by consent of counsel, James Rea was sworn, and substituted to the juror Anatole Forstall, who was excused from attendance by reason of a death in his family. And the jury, being now complete, the trial proceeded, and, after hearing the pleadings, evidence, and argument, and receiving a charge from the court, James Rea was appointed foreman of the jury, and they retired to consider on their verdict, and, after a short absence, they returned into court and delivered the following verdict, to wit:

"We, the jury, unanimously find in favor of the plaintiff, as claimed.

"January 13th, 1871.

(Signed) "JA'S REA, *Foreman.*"

17 Whereupon it is ordered that the verdict be recorded, and that in accordance therewith there be judgment in favor of the plaintiff, Thomas S. Tabb, and against the defendant, Henry Boyce, for the sum of twenty-five hundred dollars, with 6 % interest thereon, from 13th February, 1861, till paid, and costs of suit.

Judgment rendered January 13th, 1871.

Judgment signed January 26th, 1871.

(Signed) E. H. DURELL, *Judge.*

Petition for writ of error.—Filed Febr'y 2nd, 1871.

United States circuit court, district of L'a.

THOMAS S. TABB
vs.
HENRY BOYCE. } No. 5650.

To the honorable the circuit court of the United States for the district of Louisiana:

The petition of Henry Boyce, of the parish of Rapides, in the State of Louisiana, respectfully represents that a final judgment was rendered against him on the 26th of January, 1871, in the above-entitled case of Thomas S. Tabb vs. Henry Boyce, by which he believes himself to be aggrieved and injured. That he is informed and believes there is error in the said judgment, and that he is entitled to a writ of error in the said cause on giving bond with security, conditioned according to law, in such sum as the court may determine, to operate as a supercedeas.

18 Wherefore your petitioner prays that a writ of error may issue in the cause, returnable at the next December term of the honorable the supreme court of the United States, on petitioner giving bond and good security in the sum to be fixed by the court.

And petitioner further prays that the said Thomas S. Tabb may be cited, according to law, to answer the said writ of error in the said Supreme Court of the United States.

(Signed) A. VOORHIES,
RANDOLPH, SINGLETON, & BROWNE,
Att'ys.

Order.

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States at Washington, on the first Monday of December next, the petitioner giving bond in the sum of seven thousand dollars, with good and solvent security, conditioned as the law directs.

February 2nd, 1871.

(Signed) E. H. DURELL, *Judge.*

Bond for writ of error.—Filed February 2nd, 1871.

Know all men by these presents that we, Henry Boyce, as principal, and Henry A. Boyce, as sur*ities*, are held and firmly bound unto Thomas S. Tabb, in the full and just sum of seven thousand dollars, to be paid to the said Thomas S. Tabb, his certain attorney, execu-

19 tors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this second day of February, in the year of our Lord one thousand eight hundred and seventy-one

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Thomas S. Tabb is plaintiff, and Henry Boyce , judgment was rendered against the said Henry Boyce, defendant, and the said Henry Boyce having obtained a writ of

error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Thomas S. Tabb, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such that if the said Henry Boyce shall procecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) HENRY BOYCE. [L. S.]
(") HENRY A. BOYCE. [L. S.]

Sealed and delivered in the presence of—
(Signed) F. B. VINOT.

20 *Affidavit of surety endorsed on the foregoing bond.*

Henry A. Boyce, surety on the within bond, being duly sworn, deposes and says that he is worth the sum of seven thousand dollars over and above his just debts and liabilities.

(Signed) HENRY A. BOYCE.

Sworn to and subscribed before me this 2nd day of February, 1871.
(Signed) F. B. VINOT, *D'y Clk.*

21 UNITED STATES OF AMERICA,
Circuit Court of the United States,
Fifth Circuit and District of Louisiana:

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 20 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, on the trial of the case of Thomas S. Tabb vs. Henry Boyce, No. 5650 of the docket, as far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 25 day of May, A. D. 1871.

[SEAL.] D. URBAN, *Clerk.*

[5-c't. int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify, that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 25 day of May, 1871.

E. H. DURELL, *Judge.*

[5-c't. int. rev. stamp, canceled.]

22 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of

the judgment of a plea which is in the said circuit court, before you, or one of you, between Thomas S. Tabb and Henry Boyce, a manifest error hath happened, to the great damage of the said Henry Boyce, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this second day of February, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court,
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 5650. Henry Boyce, plaintiff in error, versus Thomas S. Tabb, defendant in error. Writ of error. Filed February 2d, 1871. F. B. Vinot, d'y cl'k.

23 DISTRICT OF LOUISIANA:

The President of the United States, to Thomas S. Tabb, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition & a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Henry Boyce is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff as in said petition & writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this second day of February, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

24 (Indorsed)

United States circuit court. No. 5650. Henry Boyce, pl'ff in error, vs. Thomas S. Tabb, def't in error. Citation in error.

Marshal's return.

Received Feb. 2, 1871, by the U. S. marshal, and on the 16th day of same month and year, served copy of within citation in error on the within-named Tho's S. Tabb, by delivering same to C. A. Conrad, his attorney of record, in person, at 37 Carondelet street, New Orleans, La.

New Orleans, La., Feb'y 16th, 1871.

S. W. REED,
D'y U. S. Marshal.

On this 16th day of February, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he delivered a true copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me.

F. B. VINOT, *D'y Clk.*

(Indorsement on cover: No. 389. Henry Boyce, plaintiff in error, vs. Thomas S. Tabb. Louisiana C. C. U. S. Filed 21st November, 1871.